

**CHAPTER 944**  
**Illicit Discharge Detection and Elimination Program**

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**944.01 PURPOSE AND INTENT.**

(a) The purpose of this Chapter is to provide for the health, safety and general welfare of the residents of Summit County through the regulation of non-stormwater discharges to the storm water drainage system to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm systems (“MS4”) of the County’s co-permittees in order to comply with the requirements of the National Pollutant Discharge Elimination System (“NPDES”) permit process. The objectives of this Chapter are:

- (1) To regulate the contribution of pollutants to the MS-4s of the County’s co-permittees via stormwater discharges by any user; and
- (2) To prohibit illicit connections and discharges to the MS-4s of the County’s co-permittees; and
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

**944.02 DEFINITIONS**

The definition of terms provided herein shall be supplemented, where applicable, by the definition of such terms under federal law in the Clean Water Act (33 U.S.C. § 1251 et seq.) and under the related federal regulations, and by applicable laws of the State of Ohio. Where there is a conflict between the definitions as stated in federal or state law and this Chapter, the more restrictive definition shall apply. For purposes of this Chapter, the following shall mean:

(a) “Authorized Enforcement Agency” shall mean the County Engineer’s Office, which shall enforce this Chapter.

(b) “Best Management Practices, or BMP” shall mean the schedules of activities, prohibition of practices, general good housekeeping practices and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater conveyance systems. BMPs also include practices to control drainage from raw material storage.

(c) “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and any subsequent amendments thereto.

(d) “Construction activity” means land disturbance of one acre or more. Such activities include but are not limited to, clearing and grubbing, grading, excavating and demolition. See also, Summit County Codified Ordinance Chapter 941.

(e) “Hazardous materials or substances” means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(f) “Illegal discharge” as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities., except as exempted in Section 944.06 of this Chapter.

(g) “Illicit connections,” means either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by an authorizing enforcement agency; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by Summit County.

(h) “Industrial activity” means activities subject to NPDES Industrial Permits as defined in 40 C.F.R. § 122.26(b)(14).

(i) “Municipal separate storm sewer system or “MS4” means a conveyance or system of conveyances, such as drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains that are:

(1) that is owned by the federal government, state, municipality, township, county, district, or other public body created pursuant to state and federal law, including a special district under state law, such as a sewer district, flood control district, drainage district or similar entity or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the State of Ohio; and

(2) designated or used to collect or convey solely storm water; and

(3) which is not a combined sewer; and

(4) which is not part of a publicly owned treatment works.

(j) “National pollutant discharge elimination system permit” or “NPDES permit” means a permit issued by the U.S. Environmental Protection Agency or the State pursuant the authority granted to it by 33 U.S.C. § 1342(b) that authorizes the discharge of pollutants into the waters of the State whether the permit is applicable on an individual, group or general area-wide basis.

(k) “Non-storm water discharge” means any discharge to the storm drain system that is not composed entirely of storm water.

(l) “Person” means any individual, corporation, partnership, association, company or body politic, including any agency of the County of Summit, the State of Ohio or the United States.

(m) “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents, oil and other automotive fluids; not-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, concentrations and accumulations of materials, so that they may cause or contribute to pollution; floatables, pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

(n) “Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(o) “Storm drainage system” means publicly owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural water bodies and human-made or altered drainage channels, reservoirs and other drainage structures.

(p) “Storm water” means any surface flow, runoff and drainage consisting entirely of water from any natural precipitation, and resulting from such precipitation.

(q) “Stormwater pollution prevention program” or “SWP3” means a document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving to the maximum extent practicable.

(r) "Undeveloped Land" shall mean all land that is not altered from its Natural State.

(s) “Watercourse” means any body of water, including but not limited to, lakes, ponds, rivers, streams and bodies of water delineated as waters of the State of Ohio.

(t) “Waters of the State of Ohio” means all streams, lakes, ponds, marshes, watercourse, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly within, partly within or border upon the State of Ohio or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.

#### **944.03 APPLICABILITY.**

This Chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands in the cities, villages and townships of Summit County that are co-permittees with the County on its NPDES permit.

#### **944.04 RESPONSIBILITY FOR ADMINISTRATION.**

The County Engineer’s Office is designated as that authorized enforcement agency and shall administer, implement and enforce the provisions of this Chapter. The County may

contract with the Summit County Combined General Health District, or other agencies and commercial contractors, as may be determined to be appropriate, to conduct inspections and monitoring, and to assist with enforcement actions.

#### **944.05 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.**

(a) Where this Chapter is in conflict with other provisions of law or ordinances, the most restrictive provisions as determined by the County Engineer shall prevail.

(b) The provisions of this Chapter are hereby declared to be severable. If any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be invalid, such invalidity shall not affect the other provisions or application of this Chapter.

(c) This Chapter shall not be construed as authorizing any person to maintain a nuisance on their property and compliance with the provisions of this Chapter shall not be a defense in any action to abate such a nuisance.

(d) Failure of the authorized enforcement agency or other delegated agents to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility of the condition or damage resulting therefrom and shall not result in the authorized enforcement authority, its officers, employees, or agents being responsible for any condition related therefrom.

#### **944.06 DISCHARGE PROHIBITIONS.**

(a) No person shall discharge or caused to be discharged into the MS4 or watercourses any materials, including but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except described as follows:

(1) The following discharges are exempt from the discharge prohibitions established by this Chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (including active groundwater dewatering systems), crawlspace pumps, air conditioning condensation, springs, non-commercial washing of vehicles, street wash water, natural riparian habitat or wetland flows, swimming pools (if dechlorinated – typically less than one PPM chlorine), firefighting activities and any other water source not containing pollutants.

(2) Discharges specified in writing by the County Engineer as being necessary to protect public health and safety.

(3) Discharges from off-lot household sewage treatment systems permitted by the Summit County Combined General Health District for the purpose of discharging sewage effluent in accordance with Ohio Administrative Code § 3701-29-02 until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for residential 1, 2, or 3-family dwellings. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Summit County Combined General Health District. In compliance with NPDES Permit #OHQ000001, or subsequent versions thereof, discharges from all off-lot discharging household sewage systems must either be eliminated or have coverage under an

appropriated NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available, discharges from the off-lot discharging household sewage treatment systems will no longer be exempt from the requirement of this Chapter.

(4) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(5) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(b) Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to an MS4 is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

(3) A person is considered in violation of this Chapter if the person connects a line conveying sewage to an MS4 or allows such a connection to be made.

#### **944.07 SUSPENSION OF MS4 ACCESS.**

(a) Suspension due to illicit discharges in emergency situations. The County Engineer may, without notice, suspend discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or the waters of the State of Ohio. If the violator fails to comply with a suspension order issued in an emergency, the Engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the State of Ohio or to minimize danger to persons.

(b) Suspension due to the detection of illicit discharge. Any person discharging to an MS4 in violation of this Chapter may have their storm drainage access terminated if such termination would abate or reduce an illicit discharge. The County Engineer will notify a violator of the proposed termination of its MS4 access. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the approval of the County Engineer.

#### **944.08 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

Any person subject to an industrial or construction activity SWPPP and/or NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the County Engineer prior to allowing discharges to an MS4.

#### **944.09 MONITORING OF DISCHARGES.**

(a) Applicability. This section applies to all facilities that have storm water discharges associated with industrial, residential, institutional, or commercial activity, including construction activity.

(b) Access to Facilities.

(1) The County Engineer shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(2) Facility operators shall allow the County Engineer ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The County Engineer shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the County Engineer to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The County Engineer shall have the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall promptly be removed by the operator at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the County Engineer access to a permitted facility is in violation of a storm water discharge permit and this Chapter. A person who is the operator of a facility with a SWPPP or NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the County Engineer reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Chapter.

(7) If the County Engineer has been refused access to any part of the premises from which storm water is discharged, and the County Engineer is able to demonstrate probable cause to believe that there has been a violation of this Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the County Engineer may, through the County Prosecutor, seek issuance of a search warrant from any court of competent jurisdiction.

**SECTION 944.10 REQUIREMENT TO PREVENT, CONTROL AND REDUCE  
STORWATER POLLUTANTS BY THE USE OF BEST  
MANAGEMENT PRACTICES.**

Chapter 943 of the Codified Ordinances, entitled "Comprehensive Storm Water Management," has adopted requirements identifying Best Management Practices ("BMPs") for activities, operations or facilities which may cause or contribute to the pollution or contamination of storm water, the storm drain system, or waters of the State of Ohio. The owner or operators of a commercial or industrial establishment shall provide, at their own expense, reasonable

protection from accidental discharge or prohibited materials or other wastes into an MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs.

#### **944.11 ENFORCEMENT**

A. Notice of Violation. When the County Engineer finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the County Engineer may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility or property. Such notice may require the following actions:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit discharges or illegal connections;
3. That violating discharges, practices, or operations cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
5. The implementation of source control or treatment BMPs.

B. If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility or property owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.

C. Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.

D. Administrative Hearing: Any person aggrieved or adversely affected by any action taken or determination made under this Chapter may request a hearing before the County Engineer pursuant to the Appeals Process set forth in Codified Ordinance Section 942.11. Any further proceedings shall be held pursuant to that section.

E. Injunctive Relief: It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation. Enforcement may be brought pursuant to O.R.C. 3767.04, or any other applicable provision of law. If an owner/operator has violated or continues to violate the provisions of this regulation, the County Engineer may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

#### **944.12 REMEDIES NOT EXCLUSIVE**

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the County Engineer to seek cumulative remedies.